

MAR 15 2005

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

JACK SCHLADETSCH

Plaintiff,

V.

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

c/o Office of General Counsel
451 Seventh Street, S.W.
Room 258
Washington, D.C. 20420-0500

Defendant.

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CASE NUMBER 1.05CV00530
JUDGE: Emmet G. Sullivan
DECK TYPE: FOIA/Privacy Act
DATE STAMP: 03/15/2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. Section 552, as amended, ("FOIA") to order the production of agency records, namely records in the possession and control of the U.S. Department of Housing and Urban Development ("HUD") relating to listings of unpaid Mutual Mortgage Insurance distributive shares and One-Time Mortgage Insurance Premium Refunds that were approved for payment but never actually paid due either to uncashed or undelivered U.S. Treasury checks from 1977 through September 15, 2002.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. Section 552(a)(4)(B).

3. Plaintiff, Jack Schladetsch, is a private investigator, who for a number of years, has

been offering his services to potential payees to assist them in securing unpaid Refunds or Shares they are due on loans they had with HUD's Federal Housing Authority ("FHA") program. Mr. Schladetsch is the requester of all the withheld records.

4. Defendant U.S. Department of Housing and Urban Development is an executive branch agency of the United States, and it has possession and control over the records that Plaintiff seeks.

5. HUD through its component, FHA, offers a loan program to homeowners. These loans are protected by FHA Mortgage Insurance. When these loans are paid off in advance of a specified date, the borrower is entitled to a rebate of some portion of the prepaid insurance premiums for that loan. For loans originating before September 1, 1983 these rebates are called Mutual Mortgage Insurance (MMI) Distributive Shares and for loans originating after September 1, 1983 the rebates are called One-Time Mortgage Insurance Premium (OTMIP) Refunds. HUD makes available to the public the lists of individuals entitled to such MMI distributive shares or OTMIP refunds to assist in the return of this money.

6. Once the applications for these Distributive Shares and OTMIP Refunds are approved by HUD, payments are made in the form of U.S. Treasury checks. Some of these checks are returned for a variety of reasons and are noted as uncashed or undeliverable in HUD's records.

7. On at least four prior occasions, Plaintiff has been given full access to similar files by HUD in response to previously filed FOIA requests.

8. By letter dated September 15, 2004, Plaintiff, through counsel, requested under the FOIA HUD's listing of unpaid MMI Distributive Shares and OTMIP Refunds for loans that were approved for payment but never actually paid due either to uncashed or undelivered U.S.

Treasury Checks from 1977 through the date of the processing of his request. The request acknowledged and agreed that HUD could apply a two-year hold back period, for applications where rights in the MMI Distributive Shares or OTMIP Refunds had initially vested within two years of the date of his request, in compliance with HUD's standard policy derived from Aronson v. HUD, 822 F.2d 182 (1st Cir. 1987). The letter also clarified that the request specifically was to include those cases where the agency may have forwarded new or updated application forms or any other cases which were previously approved for payment and remain unpaid. A copy of Plaintiff's initial request letter is attached hereto as Exhibit A.

9. Plaintiff's request sought the information in computer form (i.e., on CD diskette). Subsequent to Schladetsch v. United States Housing and Urban Development, Civ. No. 99-0175 (ESH)(April 4, 2000), Plaintiff had paid the fees required for the agency to develop the computer programming necessary to extract this information.

10. By letter dated September 27, 2004, Defendant HUD acknowledged receipt of Plaintiff's request. A copy of Defendant's letter is attached hereto as Exhibit B.

11. By letter dated December 13, 2004 Defendant requested that Plaintiff pay an advance processing fee of \$972.00. This amount was estimated by the agency to cover all necessary costs associated with providing the information. A copy of Defendant's letter is attached hereto as Exhibit C.

12. By letter dated December 16, 2004, Plaintiff, through counsel, tendered a check in the amount of \$972.00 to cover the estimated processing fees. A copy of Plaintiff's letter and counsel's check is attached hereto as Exhibit D.

13. More than twenty business days have passed since the agency received Plaintiff's

request as provided under 5 U.S.C. §§ 552(a)(6)(A)(ii) and (a)(6)(C)(i), and the requested information has not been provided, nor has the agency formally denied Plaintiff's request.

14. Plaintiff has a statutory right to the records he seeks, and there is no legal basis for Defendant's refusal to disclose them to him.

WHEREFORE, Plaintiff prays that this Court:

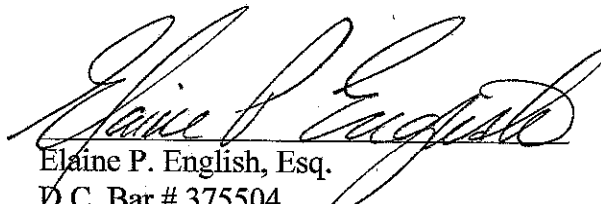
(A) Declare that Defendant's refusal to disclose the records requested by Plaintiff is unlawful and improper;

(B) Order Defendant to make the requested records promptly available to Plaintiff in the format he has requested;

(C) Award Plaintiff his costs and reasonable attorneys' fees in this action; and

(D) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Elaine P. English, Esq.
D.C. Bar # 375504

Graybill & English, L.L.C.
1875 Connecticut Avenue, N.W.
Suite 712
Washington, D.C. 20009
Telephone: (202) 956-5143
Email: ElaineEngl@aol.com

Attorney for Plaintiff, Jack Schladetsch

March 15, 2005

PLAINTIFF'S EXHIBIT A

Graybill & English, L.L.C.
Attorneys at Law

1875 Connecticut Avenue, N.W.
Suite 712
Washington, D.C. 20009

Nina M. Graybill, Esq. (DC, MD)
Elaine P. English, Esq. (DC, VA)
Jeffrey M. Kleinman, Esq. (DC, VA), *Of counsel*

Telephone No. 202-588-9798
Facsimile No. 202-457-0662
Writer's Direct Dial: 202-956-5143
Writer's Extension: 143

September 15, 2004

Ms. Marylea Byrd
Assistant General Counsel
Freedom of Information Act Division
Office of the General Counsel
United States Department of Housing
And Urban Development
451 Seventh Street, SW, Room 10248
Washington, D.C. 20410-3000

Re: Freedom of Information Act Request

Dear Ms. Byrd:

On behalf of my client, Jack Schladetsch and his company, Nationwide Guarantee and Trust Corporation, I hereby request, pursuant to the Federal Freedom of Information Act, 5 U.S.C. Section 552, a listing of unpaid Mutual Mortgage Insurance ("MMI") distributive shares (for loans originating before September 1, 1983) and one-time mortgage insurance premium ("OTMIP") refunds (for loans originating after September 1, 1983) that were approved for payment but never actually paid due either to uncashed or undelivered U.S. Treasury checks from 1977 through the date of your processing of this request, subject only to the two-year hold back period. This specifically includes those cases where the agency may have forwarded new or updated application forms or any other cases which were previously approved for payment and remain unpaid. Mr. Schladetsch requests this information on computer diskette.

To assist in your identification of the records to which we seek access, I provide the following information: This request is identical to prior requests made by this office on behalf of Mr. Schladetsch on March 6, 2003, January 13, 2004 and May 5, 2005 and processed by your office. An even earlier, similar request was the subject of litigation culminating in an order from the United States District Court for the District of Columbia dated April 4, 2000 ordering the agency to make these records available to Mr. Schladetsch. Jack Schladetsch v. United States

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

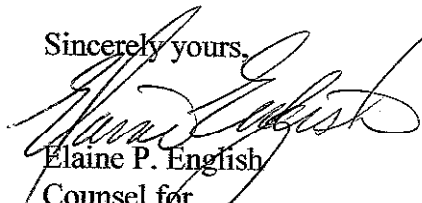
Ms. Marylea Boyd
September 15, 2004
FOIA Request
Page 2

Department of Housing and Urban Development, Civ. No. 99-0175 (ESH)(April 4, 2000). As a part of that request, Mr. Schladetsch subsequently paid fees for the processing of that request which included the costs of a computer program designed especially to extract the requested information. This request seeks the same pieces of information and endeavors only to update the prior requests through a period up to two-years of the date of the processing of this request.

Mr. Schladetsch acknowledges his status as a commercial requester for the purpose of assessing fees and is willing to pay all reasonable search, copying and review charges associated with the processing of this request. However, we ask to be notified in advance if you anticipate the processing costs exceeding \$963.00 (the fees associated with the most recent similar requests). Consistent with the mandates of the FOIA, we expect your response within twenty business days.

If you have any questions or need any additional information to complete the processing of this request, please contact me by telephone at the above number in order to expedite the request to the fullest extent possible. I would remind you of your agency's obligations under the Act to process this request in a timely manner. Thank you for your attention to this matter.

Sincerely yours,



Elaine P. English
Counsel for
Jack Schladetsch

PLAINTIFF'S EXHIBIT B



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-0500

September 27, 2004

OFFICE OF GENERAL COUNSEL

Ms. Elaine P. English
Graybill & English, L.L.C.
1875 Connecticut Avenue, N.W., Suite 71
Washington, DC 20009

RE: Freedom of Information Act Request
FOIA Control No.: FI-410686

Dear Ms. English:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated September 15, 2004. Your request was received in the Department's FOIA Division on September 15, 2004.

Pursuant to the FOIA, 5 USC 552(a)(6)(A)(i), once HUD properly receives a FOIA request, the Department has twenty working days within which to make a determination on the request unless unusual circumstances exist. Under unusual circumstances, such as an agency's backlog, or the need to examine a voluminous amount of records required by the request, HUD can extend the twenty-day time limit for processing a request. As of September 20, 2004, HUD's FOIA Division had 394 open FOIA requests. Based upon our experience and current inventory, we estimate that it may take 60 days to complete processing of your request.

HUD's policy is to process FOIA requests using "multi-track processing," which allows the Department to process FOIA requests on a first-in/first-out basis, within each track. HUD places FOIA requests in its routine or complex track based on the amount of work and time involved in processing the request. The criteria for assignment to a specific track are found in HUD's FOIA regulations, 24 CFR 15 §105(a), which were published in the Federal Register on January 22, 2001, at 66 FR 6964. Your request is being processed on the complex track. You may consult with the HUD FOIA Specialist handling your request in order to determine whether your request can be modified and transferred to the routine track. Please note that upon further evaluation of your request, you may be notified that your request has been transferred to another track.

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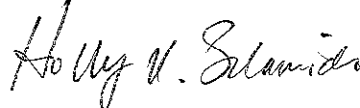
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MAR 15 2005

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U.S. DISTRICT COURT

We will comply with your request to the extent permissible by law. Any records not subject to an exemption will be forwarded to you promptly upon the completion of HUD's search and review process. Your request has been assigned to Ms. Kathryn Spence, of the FOIA Division, for processing. If you have any questions regarding your request, please contact Ms. Spence at 202-708-3866. Thank you for your interest in the Department's programs and policies.

Sincerely,

A handwritten signature in cursive script, reading "Holly K. Salamido".

Holly K. Salamido
Assistant General Counsel
Freedom of Information
Act Division

PLAINTIFF'S EXHIBIT C



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

OFFICE OF THE GENERAL COUNSEL

December 13, 2004

Ms. Elaine P. English
Graybill & English, L.L.C.
1875 Connecticut Avenue, N.W.
Suite 712
Washington, D.C. 20009

RE: Freedom of Information Act Request
FOIA Control No.: FI-410686

Dear Ms. English:

This letter is in reference to your Freedom of Information Act (FOIA) request dated September 15, 2004, on behalf of your client, Mr. Jack Schladetsch. In that request, you asked for a listing of unpaid Mutual Mortgage Insurance ("MMI") distributive shares (for loans originating before September 1, 1983) and one-time mortgage insurance premium ("OTMIP") refunds (for loans originating after September 1, 1983) that were approved for payment but never actually paid due either to un-cashed or undelivered U.S. Treasury checks from 1977 through the date of the Department processing this request, subject only to the two-year hold back period.

Each FOIA request must contain an agreement to pay certain costs for processing the records. There are four categories of requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the media; and all other requesters. Specific levels of fees are prescribed for each of these categories. We have determined that your request falls under the "commercial" category.

As you may know, FOIA requests involving fees of \$250.00 or more must be paid in advance. From a preliminary search for records responsive to your request, we estimate that the cost for processing your request will be approximately \$972.00. The system users base this assessment upon \$186.00 for 2 hours of analyzing and modifying the exact fields required for this request; \$555.00 for 15 hours of reviewing the data by the project leader; and, \$231.00 for 6.25 hours of review of the data. If these fees are higher than you anticipated, please feel free to confer with Ms. Katherine Spence, of my staff, to determine if it is possible to redefine your request to meet your needs at a reduced cost. She can be reached at (202) 708-3866. X
4916

If you wish the Department to proceed with processing your request as originally stated, please sign and return the enclosed agreement to pay the fees outlined above and include payment in the amount specified. **You must remit payment at this time.** The signed agreement should be returned to:

U.S. Department of Housing
and Urban Development
Office of the General Counsel

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U.S. DISTRICT COURT

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FI-410686

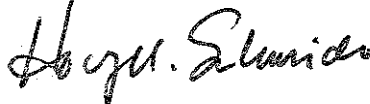
FOIA Division
Room 10250
451 7th Street, SW
Washington, DC 20410-3800

Telephone: (202) 708-3866
Fax Number: (202) 401-7901

Please be advised that further processing of your request will be held in abeyance for 10 business days from the date of this letter. If the Department does not receive payment within the 10-day period, nor have you contacted HUD staff to redefine your request, we will conclude that you do not desire further processing and your request will be withdrawn. Please note that a withdrawal does not preclude you from filing further FOIA requests.

Thank you for your interest in the Department's programs and policies.

Sincerely,



Holly K. Salamido
Assistant General Counsel
Freedom of Information Act Division

PLAINTIFF'S EXHIBIT D

Graybill & English, L.L.C.
Attorneys at Law

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Suite 712
Washington, D.C. 20009

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Elaine P. English, Esq. (DC, VA)
Jeffrey M. Kleinman, Esq. (DC, VA), *Of counsel*

Telephone No. 202-588-9798
Facsimile No. 202-457-0662
Writer's Direct Dial: 202-956-5143

December 16, 2004

U.S. Department of Housing
And Urban Development
Office of the General Counsel
FOIA Division
Room 10250
451 7th Street, SW
Washington, DC 20410-3800

Attn: Kathryn Spence

Re: FOIA Control No. FI-410686

Dear Ms. Spence:

Enclosed is a check in the amount of \$972.00 to cover the processing fees for the above-reference FOIA request made by this firm on behalf of Jack Schladetsch. A copy of your letter dated December 13, 2004 is enclosed. As we discussed by telephone, you will now coordinate the final processing of the request and the preparation of the CD with the data we have requested.

We ask that you complete the necessary processing and provide us with the requested information as promptly as possible.

Thank you for your assistance with this matter.

Sincerely yours,


Elaine P. English

Enclosure

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MAR 15 2005

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U.S. DISTRICT COURT

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GRAYBILL & ENGLISH, LLC
1876 CONNECTICUT AVE NW, SUITE 714
WASHINGTON, DC 20008
(202) 588-9798

SUNTRUST BANK
WASHINGTON, DC 20003-1192
BR-2700340

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12/16/2004

\$ **972.00

PAY TO THE
ORDER OF U.S. Treasury

Nine Hundred Seventy-Two and 00/100

U.S. Treasury

DOLLARS

FOIA Control No. FI-410686

MEMO

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James J. Murphy